

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	2

MR. SPEAKER:

*Your Committee on Financial Institutions, to which was referred House Bill 1655, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 23-2-5-3, AS AMENDED BY P.L.115-2001,
- 4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2003]: Sec. 3. (a) As used in this chapter, "certificate of
- 6 registration" means a certificate issued by the commissioner
- 7 authorizing an individual to engage in origination activities on behalf
- 8 of a licensee.
- 9 (b) As used in this chapter, "creditor" means a person:
- 10 (1) that loans funds of the person in connection with a loan; and
- 11 (2) to whom the loan is initially payable on the face of the note or
- 12 contract evidencing the loan.
- 13 (c) As used in this chapter, "license" means a license issued by the
- 14 commissioner authorizing a person to engage in the loan brokerage

1 business.

2 (d) As used in this chapter, "licensee" means a person that is issued
3 a license under this chapter.

4 (e) As used in this chapter, "loan broker" means any person who, in
5 return for any consideration from any person, promises to procure a
6 loan for any person or assist any person in procuring a loan from any
7 third party, or who promises to consider whether or not to make a loan
8 to any person. "Loan broker" does not include:

9 (1) any bank, savings bank, trust company, savings association,
10 credit union, or any other financial institution that is:

11 (A) regulated by any agency of the United States or any state;
12 and

13 (B) regularly actively engaged in the business of making
14 consumer loans that are not secured by real estate or taking
15 assignment of consumer sales contracts that are not secured by
16 real estate;

17 (2) any person authorized to sell and service loans for **the**
18 **Indiana housing finance authority**, the Federal National
19 Mortgage Association, or the Federal Home Loan Mortgage
20 Corporation, issue securities backed by the Government National
21 Mortgage Association, make loans insured by the United States
22 Department of Housing and Urban Development, act as a
23 supervised lender or nonsupervised automatic lender of the
24 United States Department of Veterans Affairs, or act as a
25 correspondent of loans insured by the United States Department
26 of Housing and Urban Development;

27 (3) any insurance company; ~~or~~

28 (4) any person arranging financing for the sale of the person's
29 product; **or**

30 **(5) any community development corporation (as defined in**
31 **IC 4-4-28-2).**

32 (f) As used in this chapter, "loan brokerage business" means a
33 person acting as a loan broker.

34 (g) As used in this chapter, "origination activities" means
35 establishing the terms or conditions of a loan with a borrower or
36 prospective borrower.

37 (h) As used in this chapter, "person" means an individual, a
38 partnership, a trust, a corporation, a limited liability company, a limited

liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(i) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

SECTION 2. IC 23-2-5-5, AS AMENDED BY P.L.115-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) An application for license or renewal of a license must contain:

(1) consent to service of process under subsection (e);

(2) evidence of the bond required in subsection (b);

(3) an application fee of ~~two~~ **three** hundred dollars (~~\$200~~); **(\$300)**;

(4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the commissioner under subsection (f);

(5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;

(6) a registration form setting forth the name, home address, home telephone number, and Social Security number of each employee or prospective employee of the applicant who is or who will be engaged in origination activities; and

(7) evidence that the license applicant's proposed registrants have completed the education requirements of section 21 of this chapter.

(b) A licensee must maintain a bond satisfactory to the commissioner in the amount of ~~fifty~~ **one hundred** thousand dollars (~~\$50,000~~), **(\$100,000)**, which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(c) The commissioner shall issue a license to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration authorizing the registrant to engage in origination activities.

(d) Licenses issued by the commissioner before January 1, 2001, shall be valid, and renewal of such licenses shall not be required until January 1, 2001. Individuals engaging in origination activities for a licensee before January 1, 2001, shall not be required to apply for and receive a certificate of registration until January 1, 2001. Except as otherwise provided in this subsection, licenses and certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance. The education requirements of section 21 of this chapter shall first apply to applicants for issuance or renewal of licenses or registrations effective as of January 1, 2001.

(e) Every applicant for licensure or for renewal of a license shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(f) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(g) Whenever an initial or renewal application for license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

SECTION 3. IC 23-2-5-19, AS AMENDED BY P.L.230-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 10, 17, and 18 of this chapter:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).

(3) Any person licensed as a real estate broker or salesperson

under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.

(4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).

(6) Any community development corporation (as defined in IC 4-4-28-2).

(7) The Indiana housing finance authority.

(8) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

SECTION 4. IC 24-4.6-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 5. Indiana Fair Lending and Home Loan Protection Act

Sec. 1. As used in this chapter, "benchmark rate" means the

1 interest rate established under Section 152 of the Home Ownership
 2 and Equity Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the
 3 regulations adopted under that act by the Federal Reserve Board,
 4 including 12 CFR 226.32, and the Official Staff Commentary to the
 5 regulations as each is amended.

6 Sec. 2. As used in this chapter, "bona fide discount points"
 7 means loan discount points that are:

- 8 (1) knowingly paid by the borrower;
- 9 (2) paid for the express purpose of lowering the benchmark
 10 rate;
- 11 (3) in fact reducing the interest rate or time-price differential
 12 applicable to the loan from an interest rate that does not
 13 exceed the benchmark rate; and
- 14 (4) recouped within the first four (4) years of the scheduled
 15 loan payments, if the reduction in the interest rate that is
 16 achieved by the payment of the loan discount points reduces
 17 the interest charged on the scheduled payments so that the
 18 borrower's dollar amount of savings in interest over the first
 19 four (4) years is equal to or greater than the dollar amount of
 20 loan discount points paid by the borrower.

21 Sec. 3. As used in this chapter, "borrower" means a person
 22 obligated to repay a home loan, including a coborrower, cosigner,
 23 or guarantor.

24 Sec. 4. (a) As used in this chapter, "creditor" means a person
 25 who:

- 26 (1) regularly extends consumer credit that is subject to a
 27 finance charge or is payable by written agreement in more
 28 than four (4) installments; and
- 29 (2) is a person to whom the debt arising from the home loan
 30 transaction is initially payable.

31 (b) The term also means:

- 32 (1) any person brokering a home loan, including any person
 33 who:
 - 34 (A) directly or indirectly solicits, processes, places, or
 - 35 negotiates home loans for others;
 - 36 (B) offers to solicit, process, place, or negotiate home loans
 - 37 for others; or
 - 38 (C) closes home loans that may be in the person's own

1 name with funds provided by others and that are
2 thereafter assigned to the person providing funding for
3 such loans.

4 (c) The term does not include:

- 5 (1) a servicer;
- 6 (2) any state or local housing finance authority;
- 7 (3) any other state or local governmental or quasi
- 8 governmental entity; or
- 9 (4) an attorney providing legal services in association with the
- 10 closing of a home loan.

11 Sec. 5. As used in this chapter, "high cost home loan" means a
12 home loan whose interest rate or points and fees exceed the
13 benchmark rate.

14 Sec. 6. As used in this chapter, "home loan" means a loan, other
15 than a reverse mortgage transaction, where the loan is secured by
16 a:

- 17 (1) mortgage or deed of trust on real estate in Indiana upon
- 18 which there is located or there is to be located a structure or
- 19 structures designed primarily for occupancy of one (1) to four
- 20 (4) families and that is or will be occupied by a borrower as
- 21 the borrower's principal dwelling; or
- 22 (2) security interest on a manufactured home that is or will be
- 23 occupied by a borrower as the borrower's principal dwelling.

24 Sec. 7. (a) As used in this chapter, "manufactured home" means
25 a structure transportable in one (1) or more sections:

- 26 (1) that:
 - 27 (A) is greater than or equal to eight (8) body feet in width;
 - 28 or
 - 29 (B) is greater than or equal to forty (40) body feet in
 - 30 length;
- 31 (2) built on a permanent chassis; and
- 32 (3) designed to be used as a dwelling:
 - 33 (A) with a permanent foundation when erected on land
 - 34 secured in conjunction with the real property where the
 - 35 manufactured home is located;
 - 36 (B) connected to the required utilities; and
 - 37 (C) containing the required plumbing, heating, air
 - 38 conditioning, and electrical systems.

(b) The term includes any structure:

(1) that meets all requirements of subsection (a) except subsection (a)(1)(A) or (a)(1)(B); and

(2) with respect to which the manufacturer:

(A) voluntarily files a certification required by the United States Department of Housing and Urban Development; and

(B) complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. 5401 et seq.).

(c) The term does not include:

(1) rental property;

(2) second homes; or

(3) manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

Sec. 8. As used in this chapter, "points and fees" means any of the following:

(1) An amount payable under a point, discount, or other system or additional charges.

(2) A service or carrying charge.

(3) A loan fee, finder's fee, or similar charge.

(4) A fee for an investigation report.

(5) Items exempted from computation of points and fees in extensions of credit secured by an interest in real property. However, the following items, when charged in connection with any extension of credit secured by an interest in real property, may not be included in the computation of the finance charge with respect to that transaction, provided that the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor:

(A) Fees or premiums for title examination, title insurance, or similar purposes.

(B) Fees for preparation of loan related documents.

(C) Escrows for future payments of taxes and insurance.

(D) Fees for notarizing deeds and other documents.

(E) Appraisal fees, including fees related to any pest

1 infestation or flood hazard inspections conducted before
2 closing.

3 (F) Credit reports.

4 (6) All compensation paid directly or indirectly to a mortgage
5 broker, including a broker that originates a loan in its own
6 name in a table funded transaction.

7 (7) The cost of all premiums financed by the creditor, directly
8 or indirectly, for:

9 (A) credit life;

10 (B) credit disability;

11 (C) credit unemployment;

12 (D) credit property insurance;

13 (E) other life or health insurance; or

14 (F) any payments financed by the creditor directly or
15 indirectly for any debt cancellation or suspension
16 agreement or contract. However, insurance premiums
17 calculated and paid on a monthly basis are not considered
18 financed by the creditor.

19 Sec. 9. As used in this chapter, "rate" means the interest rate
20 charged on the home loan, based on an annual simple interest yield.

21 Sec. 10. As used in this chapter, "total loan amount" means:

22 (1) the principal of the loan minus the points and fees that are
23 included in the principal amount of the loan; or

24 (2) the total line of credit allowed under the home loan for an
25 open end loan.

26 Sec. 11. As used in this chapter, "trigger rate" means:

27 (1) for fixed rate loans in which the interest rate will not vary
28 during the term of the loan, the rate as of the date of closing;

29 (2) for loans in which the interest varies according to an
30 index, the sum of the index rate as of the date of loan closing
31 plus the maximum margin permitted at any time under the
32 loan agreement; or

33 (3) for all other loans in which the rate may vary at any time
34 during the term of the loan, the maximum rate that may be
35 charged during the term of the loan.

36 Sec. 12. A creditor making a home loan may not finance,
37 directly or indirectly, any:

38 (1) credit life insurance;

- 1 (2) credit disability insurance;
- 2 (3) credit unemployment insurance;
- 3 (4) credit property insurance;
- 4 (5) other life or health insurance; or
- 5 (6) payments directly or indirectly for any cancellation
- 6 suspension agreement or contract.

7 However, insurance premiums, debt cancellation fees, or
8 suspension fees calculated and paid on a monthly basis may not be
9 considered financed by the creditor for purposes of this chapter.

10 Sec. 13. When within the first three (3) years of a high cost home
11 loan a refinancing occurs, a current creditor of that high cost home
12 loan may only charge points and fees on the amount that exceeds
13 the principal and interest paid to close the original loan.

14 Sec. 14. A creditor may not recommend or encourage default on
15 an existing loan or other debt before and in connection with the
16 closing or planned closing of a home loan that refinances all or any
17 part of the existing loan or debt.

18 Sec. 15. A creditor may not charge a late payment fee except
19 according to the following rules:

- 20 (1) The late payment fee may not exceed four percent (4%) of
21 the amount of the payment past due.
- 22 (2) The late payment fee may be assessed only for a payment
23 past due for at least fifteen (15) days.
- 24 (3) The late payment fee may not be charged more than one
25 (1) time with respect to a single late payment. If a late
26 payment charge is deducted from a payment made on the loan
27 and the deduction causes a subsequent default on a
28 subsequent payment, a late payment charge may not be
29 imposed for the default. If a late payment charge has been
30 imposed one (1) time with respect to a particular late
31 payment, a late payment fee may not be imposed with respect
32 to any future payment that would have been timely and
33 sufficient, but for the previous default.
- 34 (4) A late payment fee may not be charged unless the creditor
35 notifies the borrower within forty-five (45) days following the
36 date the payment was due that a late payment charge has
37 been imposed for a particular late payment. A late payment
38 charge may not be collected from any borrower if the

1 borrower informs the creditor that nonpayment of an
 2 installment is in dispute and presents proof of payment within
 3 forty-five (45) days after receipt of the creditor's notice of the
 4 late charge.

5 (5) A creditor shall treat each payment as posted on the same
 6 date as it was received by the creditor, servicer, or creditor's
 7 agent, or at the address provided to the borrower by the
 8 creditor, servicer, or the creditor's agent for making
 9 payments.

10 Sec. 16. A home loan may not contain a provision that permits
 11 the creditor, in its sole discretion, to accelerate the indebtedness.
 12 This section does not prohibit acceleration of the loan in good faith
 13 due to the borrower's failure to abide by the material terms of the
 14 loan.

15 Sec. 17. A creditor may not charge a fee for informing or
 16 transmitting to a person the balance due to pay off a home loan or
 17 to provide a release upon prepayment. A creditor must provide a
 18 payoff balance not later than seven (7) business days after the
 19 request is received by the creditor.

20 Sec. 18. (a) The following additional limitations and prohibited
 21 practices apply to a high cost home loan:

22 (1) Prepayment fees or penalties may not be included in the
 23 loan documents for a high cost home loan or charged to the
 24 borrower if the fees or penalties exceed in total two percent
 25 (2%) of the loan amount prepaid during the first twenty-four
 26 (24) months after the loan closing.

27 (2) A prepayment penalty may not be contracted for after the
 28 second year following the loan closing.

29 (3) A creditor may not include a prepayment penalty fee in a
 30 high cost home loan unless the creditor offers the borrower
 31 the option of choosing a loan product without a prepayment
 32 fee. The terms of this offer shall be made in writing and shall
 33 be initialed by the borrower. The document containing the
 34 offer must be clearly labeled in large bold type and must
 35 include the following disclosure:

36 "LOAN PRODUCT CHOICE

37 I was provided with an offer to accept a product both with
 38 and without a prepayment penalty provision. I have chosen

1 to accept the product with a prepayment penalty.".

2 (b) A high cost home loan may not contain a scheduled payment
3 that is more than twice as large as the average of earlier scheduled
4 payments, unless the payment schedule is adjusted to the seasonal
5 or irregular income of the borrower.

6 (c) A high cost home loan may not include payment terms under
7 which the outstanding principal balance will increase at any time
8 over the course of the loan because the regular periodic payments
9 do not cover the full amount of interest due.

10 (d) A high cost home loan may not contain a provision that
11 increases the interest rate after default. However, this subsection
12 does not apply to interest rate changes in a variable rate loan
13 otherwise consistent with the provisions of the loan documents if
14 the change in the interest rate is not triggered by the event of
15 default or the acceleration of the indebtedness.

16 (e) A high cost home loan may not include terms under which
17 more than two (2) periodic payments required under the loan are
18 consolidated and paid in advance from the loan proceeds provided
19 to the borrower.

20 (f) Without regard to whether a borrower is acting individually
21 or on behalf of others similarly situated, any provision of a home
22 loan agreement that:

23 (1) allows a party to require a borrower to assert any claim or
24 defense in a forum that is:

25 (A) less convenient;

26 (B) more costly; or

27 (C) more dilatory;

28 for the resolution of the dispute than a judicial forum
29 established in this state where the borrower may otherwise
30 bring a claim or defense; or

31 (2) limits in any way any claim or defense the borrower may
32 have;

33 is unconscionable and void.

34 (g) A creditor may not make a high cost home loan without first
35 providing the borrower information to facilitate contact with a
36 nonprofit counselor approved by the United States Department of
37 Housing and Urban Development or the Indiana housing finance
38 authority established by IC 5-20-1-3 and copies of all

1 documentation required from the creditor at the time of closing
2 under the Federal Truth In Lending Act. This information must be
3 delivered by certified mail at least seventy-two (72) hours before
4 the closing.

5 (h) A creditor may not make a high cost home loan without
6 regard to repayment ability. If a creditor presents evidence that
7 the creditor followed commercially reasonable practices in
8 determining the debt to income ratio, there is a rebuttable
9 presumption that the creditor made the loan with due regard to
10 repayment ability. The lender shall benefit from the rebuttable
11 presumption that the borrower's statement of income is true and
12 complete.

13 (i) A creditor may not pay a contractor under a home
14 improvement contract from the proceeds of a high cost home loan
15 unless:

16 (1) the creditor is presented with a signed and dated
17 completion certificate showing that the home improvements
18 have been completed; and

19 (2) the instrument is payable to the borrower or jointly to the
20 borrower and the contractor or, at the election of the
21 borrower, through a third party escrow agent under a written
22 agreement signed by the borrower, the creditor, and the
23 contractor before the disbursement.

24 (j) A creditor may not charge a borrower any fees or other
25 charges to modify, renew, extend, or amend a high cost home loan
26 or to defer any payment due under the terms of a high cost home
27 loan.

28 (k) A creditor making a high cost home loan that has the right
29 to foreclose must use the judicial foreclosure procedures of the
30 state where the property securing the loan is located. The borrower
31 has the right to assert in the proceeding the nonexistence of a
32 default and any other claim or defense to acceleration and
33 foreclosure, including any claim or defense based on any violations
34 of this chapter, though no claim or defense is considered a
35 compulsory counterclaim.

36 (l) A creditor may not engage in a practice or have a policy that
37 encourages making a high cost home loan on the basis of race,
38 ethnicity, gender, or age.

1 **Sec. 19. If a creditor asserts that grounds for acceleration exist**
2 **and requires the payment in full of all sums secured by the security**
3 **instrument, the borrower or anyone authorized to act on the**
4 **borrower's behalf at any time before the title is transferred by**
5 **means of foreclosure, by judicial proceeding and sale, or otherwise,**
6 **may cure the default and reinstate the home loan by tendering the**
7 **amount or performance as specified in the security instrument. If**
8 **the borrower cures the default, the borrower must be reinstated to**
9 **the same position as if the default had not occurred, and any**
10 **acceleration of any obligation under the security instrument or**
11 **note arising from the default is nullified as of the date of the cure.**

12 **Sec. 20. (a) Before an action is filed to foreclose upon the home**
13 **or before other action is taken to seize or transfer ownership of the**
14 **home, a notice of the right to cure the default in a home loan must**
15 **be delivered to the borrower, informing the borrower of the**
16 **following:**

17 **(1) The nature of default claimed on the home loan and the**
18 **borrower's right to cure the default by paying the sum of**
19 **money required to cure the default. However, a creditor or**
20 **servicer may not refuse to accept any partial payment made**
21 **or tendered in response to the notice. If the amount necessary**
22 **to cure the default will change during the thirty (30) day**
23 **period after the effective date of the notice due to the**
24 **application of a daily interest rate or the addition of late fees**
25 **as allowed by this chapter, the notice must give sufficient**
26 **information to enable the borrower to calculate the amount at**
27 **any point during the thirty (30) day period.**

28 **(2) The date by which the borrower must cure the default to**
29 **avoid acceleration and initiation of foreclosure or other action**
30 **to seize the home. The date may not be less than thirty (30)**
31 **days after the date the notice is effective. The name, address,**
32 **and telephone number of a person to whom the payment or**
33 **tender must be made must also be disclosed.**

34 **(3) That if the borrower does not cure the default by the date**
35 **specified, the creditor may take steps to terminate the**
36 **borrower's ownership in the property by requiring payment**
37 **in full of the home loan and commencing a foreclosure**
38 **proceeding or other action to seize the home.**

1 **(4) The name and address of the creditor and the telephone**
 2 **number of a representative of the creditor whom the**
 3 **borrower may contact if the borrower disagrees with:**

4 **(A) the creditor's assertion that a default has occurred; or**

5 **(B) the correctness of the creditor's calculation of the**
 6 **amount required to cure the default.**

7 **(b) To cure a default under this section, a borrower may not be**
 8 **required to pay a charge, fee, or penalty attributable to the**
 9 **exercise of the right to cure a default, as provided for in this**
 10 **section, other than the fees specifically allowed by this section. The**
 11 **borrower is not liable for:**

12 **(1) attorney's fees relating to the borrower's default that are**
 13 **incurred by the lender before or during the thirty (30) day**
 14 **period described in subsection (a)(2); or**

15 **(2) a fee exceeding one hundred dollars (\$100) that is incurred**
 16 **by the lender after the expiration of the thirty (30) day period**
 17 **but before the lender files a foreclosure action or takes other**
 18 **action to seize or transfer ownership of the home.**

19 **After the lender files a foreclosure action or takes other action to**
 20 **seize or transfer ownership of the home, the borrower is liable only**
 21 **for attorney's fees that are reasonable and actually incurred by the**
 22 **lender, based on a reasonable hourly rate and a reasonable number**
 23 **of hours.**

24 **(c) If a default is cured before the initiation of an action to**
 25 **foreclose or to seize the residence, the creditor may not institute the**
 26 **foreclosure proceeding or other action for that default. If a default**
 27 **is cured after the initiation of any action to foreclose, the creditor**
 28 **shall take the steps necessary to terminate the foreclosure**
 29 **proceeding or other action. A creditor making a home loan who**
 30 **has the legal right to foreclose must use the judicial foreclosure**
 31 **procedures of the state where the property securing the loan is**
 32 **located. The borrower may assert in a judicial foreclosure**
 33 **proceeding or other action the nonexistence of a default and any**
 34 **other claim or defense to acceleration and foreclosure, including a**
 35 **claim or defense based on violations of this chapter. However, a**
 36 **claim or defense may not be considered a compulsory**
 37 **counterclaim.**

38 **Sec. 21. If the creditor or an assignee establishes by a**

preponderance of evidence that a violation of this chapter is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, the validity of the transaction is not affected, and no liability is imposed under section 22 except for the refusal to make a refund.

Sec. 22. (a) A person who knowingly or intentionally violates this article commits:

(1) a Class A misdemeanor; and

(2) a deceptive act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

(b) A person who violates this chapter is liable to the borrower for the following:

(1) Actual damages, including consequential and incidental damages. The borrower is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to the finance charges agreed to in the home loan agreement, plus ten percent (10%) of the amount financed.

(3) Punitive damages, if the violation was malicious or reckless.

(4) Costs and reasonable attorney's fees.

(c) A borrower may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(d) The knowing or intentional violation of this chapter or a rule adopted under the authority of this chapter renders the home loan agreement void, and the creditor has no right to collect, receive, or retain any principal, interest, or other charges with respect to the loan. The borrower may recover any payments made under the agreement.

(e) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a consumer. A consumer is not required to exhaust any administrative remedies under this chapter or under any other applicable law.

(f) A creditor or assignee in a home loan who in good faith fails to comply with this chapter may not be considered to have violated

1 this chapter if the creditor makes full restitution for the error
2 within sixty (60) days from the discovery of the error.

3 (g) The brokering of a home loan:

4 (1) by a home loan broker as described in section 4(b) of this
5 chapter; and

6 (2) that violates any provision of this chapter;
7 constitutes a violation of that provision and of this chapter.

8 Sec. 23. The rights conferred by this chapter are in addition to
9 rights granted under any other law.

10 Sec. 24. (a) The attorney general shall enforce this chapter for
11 any violation occurring within five (5) years after the occurrence
12 of the violations.

13 (b) As used in this chapter, "unit" refers to the mortgage fraud
14 unit established by this section.

15 (c) The mortgage fraud unit is established in the office of the
16 attorney general.

17 (d) The attorney general shall hire qualified individuals to
18 implement the responsibilities of the unit, subject to the budget
19 agency's approval.

20 (e) The unit shall do the following:

21 (1) Investigate allegations of fraud in connection with
22 mortgage lending.

23 (2) Institute appropriate administrative and civil actions to
24 redress fraud in connection with mortgage lending.

25 (3) Cooperate with federal, state, and local law enforcement
26 agencies in the investigation of fraud in connection with
27 mortgage lending.

28 (4) Cooperate with appropriate federal and state agencies in
29 the prosecution of criminal violations involving fraud in
30 connection with mortgage lending.

31 (f) The unit shall cooperate with the following to implement this
32 chapter:

33 (1) The Indiana professional licensing agency and the
34 appropriate licensing boards with respect to persons licensed
35 under IC 25.

36 (2) The department of financial institutions.

37 (3) The department of insurance with respect to the sale of
38 insurance in connection with mortgage lending.

1 (4) The securities division of the office of the secretary of
2 state.

3 (5) The supreme court disciplinary commission with respect
4 to attorney misconduct.

5 **Sec. 25.** The attorney general may file complaints with any of
6 the agencies listed in section 24(f) of this chapter to implement this
7 chapter.

8 **Sec. 26.** The establishment of the unit and its powers do not limit
9 the jurisdiction of any agency described in section 24(f) of this
10 chapter.

11 **Sec. 27. (a)** The attorney general and an investigator of the unit
12 may do any of the following when investigating alleged fraud in
13 connection with mortgage lending:

14 (1) Issue and serve a subpoena for the production of records,
15 including records stored in electronic data processing systems,
16 for inspection by the attorney general or the investigator.

17 (2) Issue and serve a subpoena for the appearance of any
18 person before the department to provide testimony under
19 oath.

20 (3) Apply to a court with jurisdiction to enforce a subpoena
21 described in subdivision (1) or (2).

22 **(b)** The attorney general shall make recommendations to the
23 general assembly for appropriate legislation to address fraud in
24 connection with mortgage lending.

25 **(c)** The unit shall maintain an education program to inform
26 consumers of mortgage loans of fraud in connection with mortgage
27 lending. The unit shall cooperate with the agencies listed in section
28 24(f) of this chapter to develop and implement the education
29 program required by this subsection.

30 **Sec. 28. (a)** The fees assessed by the county recorder to record
31 a mortgage is increased by three dollars (\$3) per mortgage filing.
32 The county recorder shall retain fifty cents (\$0.50) of the fee
33 increase. One dollar and fifty cents (\$1.50) shall be credited to the
34 Indiana housing finance authority established under IC 5-20-1-3 to
35 identify, promote, and fund mortgage literacy training and
36 programs throughout the state. One dollar (\$1) from the fee
37 increase is credited to the mortgage fraud unit.

38 **(b)** An allocation of seventy-five thousand dollars (\$75,000)

consisting of the increased fees under this chapter shall be made to the legislative council before any fee revenue shall be allocated to the mortgage fraud unit of the attorney general's office or the Indiana housing finance authority. The seventy-five thousand dollar (\$75,000) allocation shall used to contract an independent organization to conduct a study of predatory lending and the causes of the high rate of foreclosure in Indiana during 2001 and 2002.

(c) The results of the study shall be reported in writing to the legislative council not later than December 31, 2004. The report is a public record. This subsection expires January 1, 2005.

(d) The legislative council may establish an interim study committee to investigate predatory lending and the high rate of foreclosure in Indiana.

Sec. 29. The fee assessed under IC 23-2-5 by the for the registration of loan brokers and originators is increased by one hundred dollars (\$100) for renewal of a registration and by one hundred dollars (\$100) for an initial registration and is credited to the loan broker regulation account established by IC 23-2-5-7.

Sec. 30. A servicer of a covered loan shall report at least monthly both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This subsection does not prevent a servicer from agreeing with the borrower not to report specified payment history information in the event of a resolved or unresolved dispute with an borrower and does not apply to covered loans held or serviced by a lender for less than ninety (90) days."

Page 4, after line 16, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE UPON PASSAGE] This act does not affect:

- (1) rights or liabilities accrued;
- (2) penalties incurred;
- (3) crimes committed; or
- (4) proceedings begun;

before the effective date of this act. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if this act had not been enacted.

- 1 SECTION 6. [EFFECTIVE UPON PASSAGE] **The provisions of**
- 2 **this act are severable in the manner provided by IC 1-1-1-8(b).**
- 3 SECTION 7. **An emergency is declared for this act."**
- 4 Renumber all SECTIONS consecutively.
 (Reference is to HB 1698 as introduced.)

and when so amended that said bill do pass.

Representative Bardon